

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

POSITEC USA INC., a North Carolina
Corporation and POSITEC USA INC., a South
Carolina Corporation,

Plaintiffs,

v.

MILWAUKEE ELECTRIC TOOL
CORPORATION,

Defendant.

C.A. No. 05-890 (GMS)

**MILWAUKEE ELECTRIC TOOL CORPORATION'S
MOTION TO DISMISS
PURSUANT TO FEDERAL RULE OF CIVIL PROCEDURE 12(b)(1)**

Defendant Milwaukee Electric Tool Corporation ("Milwaukee") files this Motion to Dismiss Pursuant to Federal Rules of Civil Procedure 12(b)(1). In support thereof, Milwaukee respectfully shows this Court as follows:

1. On December 27, 2005, Plaintiffs Positec USA (a North Carolina Corporation) and Positec USA (a South Carolina Corporation) (collectively, "Positec USA") filed their Complaint in this case, seeking a declaratory judgment of non-infringement and invalidity as to certain patents held by Milwaukee.

2. Milwaukee – prior to filing its answer and discovery – now files this motion to dismiss any and all of Positec USA's claims against Milwaukee pursuant to Federal Rule of Civil Procedure 12(b)(1). The grounds for this motion are fully set forth in Milwaukee's Opening Brief In Support of Its Motion to Dismiss Pursuant to Federal Rules of Civil Procedure 12(b)(1) and supporting materials, filed contemporaneously herewith.

For the reasons stated above, Defendant Milwaukee respectfully requests that this Court: (1) grant Milwaukee's Motion to Dismiss; and (2) dismiss any and all of Positec USA's claims against Milwaukee. Milwaukee further requests all other relief to which it may be entitled.

MORRIS, NICHOLS, ARSHT & TUNNELL LLP

/s/ Leslie A. Polizoti

Jack B. Blumenfeld (#1014)
Leslie A. Polizoti (#4299)
1201 North Market Street
P.O. Box 1347
Wilmington, Delaware 19899-1347
(302) 575-7291
lpolizoti@mnat.com
Attorneys for Defendant
Milwaukee Electric Tool Corporation

OF COUNSEL:

Michael E. Husmann
Joseph T. Miotke
MICHAEL BEST & FRIEDRICH LLP
100 East Wisconsin Avenue
Suite 3300
Milwaukee, WI 53202-4108
(414) 271-6560

January 17, 2006
502246

CERTIFICATE OF SERVICE

I certify that on January 17, 2006 I electronically filed the foregoing with the Clerk of the Court using CM/ECF, which will send notification of such filing to William J. Marsden, Jr.

I further certify that on January 17, 2006 I caused to be served true and correct copies of the foregoing document on the following in the manner indicated:

BY HAND

William J. Marsden, Jr.
FISH & RICHARDSON P.C.
919 N. Market St., Suite 1100
Wilmington DE 19899

BY FEDERAL EXPRESS

Alan D. Smith
FISH & RICHARDSON P.C.
225 Franklin Street
Boston, MA 02110

/s/ Leslie A. Polizoti
Leslie A. Polizoti (#4299)